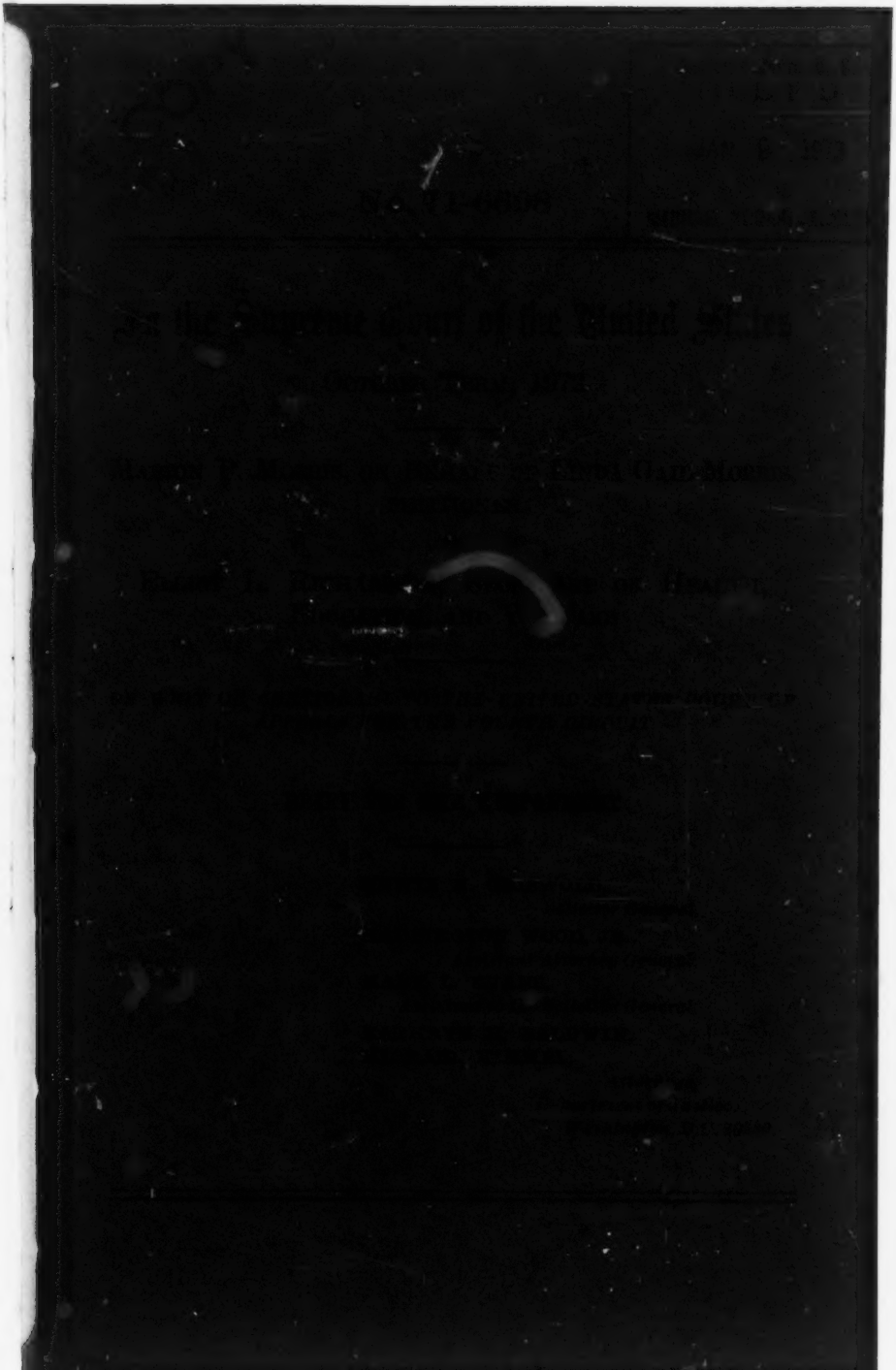

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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-6698

MARION P. MORRIS, ON BEHALF OF LINDA GAIL MORRIS, PETITIONER

v.

ELLIOT L. RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the court of appeals (App. 52–56) is reported at 445 F. 2d 775. The opinion of the district court (App. 46–49) is reported at 335 F. Supp. 1178.

JURISDICTION

The judgment of the court of appeals was entered on January 28, 1972 (App. 57). A timely petition for rehearing was denied on February 22, 1972 (App. 58). The petition for a writ of certiorari was filed on May

20, 1972, and was granted on October 10, 1972. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the writ of certiorari should be dismissed as improvidently granted because the provisions of Section 202(d)(8)(E) of the Social Security Act have been repealed since the granting of the petition for certiorari.

2. Whether former Section 202(d)(8)(E) of the Act—which provided that a child adopted by a disability beneficiary after he became entitled to disability benefits would not be entitled to child's insurance benefits unless the adoption was supervised by a child-placement agency—violated the due process clause of the Fifth Amendment.

3. Whether a regulation of the Social Security Administration that implemented former Section 202(d)(8)(E) by specifying that the term "child placement agency" did not include courts, was valid.

STATUTES AND REGULATIONS INVOLVED

The relevant provisions of Sections 202(d)(1) and (d)(8) of the Social Security Act, and of 20 C.F.R. 404.323(c), are set forth in the Appendix hereto, *infra*, pp. 29–32.

STATEMENT

Petitioner brought this action in the district court on behalf of his adopted granddaughter, Linda Gail Morris, to review the final decision of the Secretary of Health, Education, and Welfare denying child's insurance benefits. Benefits were denied on the ground that the conditions of Section 202(d)(8)(E)(i) of

the Social Security Act, 42 U.S.C. 402(d)(8)(E)(i), requiring supervision of Linda's adoption by a child-placement agency, had not been met.

1. *Events prior to the enactment of Section 202(d)(8)(E).*—Petitioner was born in November 1905 and became entitled to receive Social Security disability benefits in 1957 (Tr. 53, 100; App. 3, 27).[1] His granddaughter was born on March 7, 1965, the child of his daughter Rosemary Morris and Paul Ray Kinder (Tr. 54, 90, 105; App. 4–5, 6, 28). She was taken into the home of her grandparents during her first year and has been living with and receiving her support from them since that time (Tr. 54, 55; App. 28, 29). The Morris family lives near Whitesville, in Raleigh County, West Virginia, close to the Boone County line (Tr. 60, 67; App. 29, 32).

On October 13, 1966, when Linda was one and one-half years old, her grandparents filed in the Criminal Court of Raleigh County (acting as the Juvenile Court of Raleigh County) [2] a petition for her adoption (Tr. 104; App. 4). After a hearing held the same day, and upon consideration of the favorable recommendation of the town policeman (who at the court's direc-

[1] See Section 223 of the Social Security Act, 42 U.S.C. 423. Petitioner's period of disability began September 30, 1953 (Tr. 100; App. 3).

"Tr." refers to the Social Security administrative transcript, which is part of the record in this case. "App." refers to the printed appendix to petitioner's brief filed in this Court.

[2] See Tr. 48. The criminal court of a county in West Virginia is granted juvenile jurisdiction under W. Va. Code § 49–5–1 (Michie 1966). See also W. Va. Code §§ 49–5–5, 48–4–3, and 48–4–8 (Michie 1966).

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tion had made an investigation), the court formally decreed the adoption (Tr. 104–106; App. 4–5).

On October 22, 1966, petitioner filed an application for child's insurance benefits (Tr. 80–83). At that time the Social Security Act limited the payment of child's insurance benefits for "after-adopted" children[3] of disability beneficiaries to cases where the adoption had been decreed within two years of the wage earner's disability entitlement. Section 202(d)(8)(D) of the Act, 42 U.S.C. 402(d)(8)(D).[4] Because Linda did not qualify for benefits under this provision, the application was denied (Tr. 84, 87–89).

2. *Events after the enactment of Section 202(d)(8)(E).*—On January 2, 1968, the President signed into law the Social Security Amendments of 1967, 81 Stat. 821, which extended benefits to *all* after-adopted children of disability beneficiaries, regardless of when the adoption took place, so long as it "took place under the supervision of a public or private child placement agency," and was "decreed by a court of competent jurisdiction."[5] Section 202(d)(8)(E) of the Social Security Act, 42 U.S.C. 402(d)(8)(E).

On February 28, 1968, petitioner submitted a second application for child's insurance benefits (Tr. 90–93; App. 6–9). This application was denied (Tr. 94, 97–

[3] We use the term "after-adopted" to refer to children adopted by a disability or old-age beneficiary *after* he became entitled to benefits.

[4] At that time, this provision was Section 202(d)(9)(D), 42 U.S.C. 402(d)(9)(D) (1964 ed., Supp. I). See note 19, *infra*.

[5] Pub. L. 90–248, § 112(a), 81 Stat. 838–839.

99) because Linda's adoption had not been supervised by a public or private child-placement agency.

Thereafter, petitioner requested a hearing (Tr. 32–33). The hearing examiner, without taking further evidence, rendered a decision favorable to petitioner (Tr. 21–29; App. 11–22), on the basis that the court which decreed Linda's adoption "is substantially within the ambit of a generic definition of 'public child placement agency'" (Tr. 28; App. 21).[6] The Appeals Council *sua sponte* reviewed this decision and remanded the case to the hearing examiner to hold a hearing (Tr. 18; App. 23).

The hearing examiner, after an evidentiary hearing (Tr. 41–79), issued a revised decision reiterating his prior rulings (Tr. 11–13; App. 36–39). Included in the record was a letter from the Raleigh County judge who had decreed the adoption, stating that Raleigh County "does not have a public or private placement center or agency for children" (Tr. 113; App. 34). The hearing examiner reasoned that where no "orthodox type of child placement agency" is available, the decreeing court must be deemed a child-placement agency "if invidious discrimination is to be avoided" (Tr. 13; App. 38).

The Appeals Council reversed, denying benefits on the authority of the applicable Social Security Administration regulation (pp. 31–32, *infra*) which, in defining "public child-placement agency," states that "[t]he

[6] The hearing examiner also ruled that child's insurance benefits should be paid under Sections 202(d)(1) and 202(d)(3) of the Act, notwithstanding the provisions of Section 202(d)(8) (Tr. 26–27; App. 18–19).

term does not include a court" (Tr. 6; App. 44).[7] This decision of the Appeals Council became the final decision of the Secretary under Section 205(g) of the Act, 42 U.S.C. 405(g). See 20 C.F.R. 404.951.

Petitioner then brought this action. The district court reversed the decision of the Secretary and ordered that child's insurance benefits be granted (App. 46–51). Noting that under West Virginia law[8] an adoption "must take place in the county wherein those adopting reside" and that Raleigh County "does not, or at least at that time, did not, have a public or private placement center or agency for children,"[9] the court concluded that Linda could never have qualified for benefits (App. 48). It held that the applicable regulation, "as applied by the Secretary to the facts in this case, is arbitrary, restrictive, unjust and invalid" (App. 48).

The court of appeals (with one judge dissenting) reversed (App. 52–56). It held that the Administration's regulation validly implemented the statutory objective, and that, since the adoption could have been supervised by the West Virginia State Department of Welfare, the statutory and regulatory requirements could have been met. Accordingly, those requirements

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[7] The Appeals Council also rejected the hearing examiner's alternative conclusion that benefits must be paid under Sections 202(d)(1) and (3) without regard to the limiting provisions of Section 202(d)(8) (Tr. 5; App. 41–42). See note 6, *supra*.

[8] W. Va. Code § 48-4-1 (Michie 1966).

[9] The court did not expressly consider the Secretary's contention (Brief in Support of Motion for Summary Judgment, pp. 9–10) that the adoption could have been supervised by an outside child-placement agency.

ıld not be said to discriminate unlawfully against
opted children in Raleigh County (App. 55).

3. *Repeal of Section 202(d)(8)(E).*—On October
1972, three weeks after this Court granted cer-
rari in this case, the Social Security Amendments
1972 became law (Pub. L. 92–603, 86 Stat. 1329).
ction 111(a) of those Amendments deleted the
mer provisions of Section 202(d)(8) with respect
"after-adopted" children of disability beneficiaries
cluding the requirement for child-placement agency
ervision) and substituted a new Section 202(d)
. Under the new provisions a child adopted by a
ge earner after the latter becomes entitled to dis-
lity benefits is entitled to child's insurance benefits
y if he was both living with and receiving one-
f of his support from the wage earner for the en-
year prior to the entitlement of the wage earner.[10]
here is also a provision for a child born during
one-year period.) The amended statute is de-
ned to ensure that benefits are paid only if the
pted child actually lost a source of support when
wage earner became disabled. S. Rep. No. 92–1230,
Cong., 2d Sess., p. 141; H. Rep. No. 92–231, 92d
g., 1st Sess., p. 52.

SUMMARY OF ARGUMENT

I

fter certiorari was granted in this case, Congress
sed, and the President signed, the Social Security

[10] It thus appears that petitioner's adopted granddaughter, who did not reside with petitioner until some eight years after the disability entitlement, would not quality for benefits under the new Section 202(d)(8).

Amendments of 1972. The Amendments repealed the provisions of the Social Security Act whose constitutionality this Court granted certiorari to consider; they substituted new requirements different from those superseded. The issues in this case are therefore no longer important, and the writ of certiorari should accordingly be dismissed as improvidently granted.

II

Under the standard for reviewing the constitutionality of a Social Security Act classification—*i.e.*, whether it is reasonably related to the achievement of a proper governmental purpose—the statute in issue here is consistent with the due process clause of the Fifth Amendment.

A. The Social Security Act provides for child's insurance benefits for the dependent children of disabled or retired wage earners. The historical development of benefits for children adopted after the parent had become entitled to benefits suggests a consistent congressional concern that the promise of child's benefits not invite abuse through adoptions solely for the purpose of economic gain. In keeping with that objective, Congress provided in 1968 that such benefits would be available regardless of when the child was adopted, if the adoption were supervised by a child-placement agency and decreed by a court.

These conditions were reasonably related to the achievement of the legislative goal. Congress could reasonably determine that the two-fold safeguard of a judicial decree and independent professional supervision would provide the necessary assurance that the

adoption was in the child's best interest; it could properly conclude also that either safeguard alone would not be sufficient. While there is no question here as to the *bona fides* of petitioner's adoption of his granddaughter, Congress is free "to legislate generally, unlimited by proof of the existence of the evils in each particular situation." *North American Co.* v. *Securities and Exchange Commission*, 327 U.S. 686, 710–711.

B. The statute did not invidiously discriminate against adopted children, and this Court's recent decisions in *Weber* v. *Aetna Casualty & Surety Co.*, 406 U.S. 164, and *Stanley* v. *Illinois*, 405 U.S. 645, do not require that the provisions be struck down. In *Weber* the denial of workmen's compensation benefits to unacknowledged illegitimate children was not reasonably related either to the stated objective of protecting legitimate family relationships or to the recognized purposes of workmen's compensation laws. The statute was, rather, a manifestation of a pattern of state discrimination against illegitimate children. The classification here, however, was reasonably related to the goal of avoiding abuse, and there is no comparable pattern of discrimination.

In *Stanley* the statute was struck down because it permitted the State to take a child from his unmarried father without a hearing and without proof of neglect. The State's interest in that procedure could not outweigh the father's fundamental interest in his own children. Here, the only interest is an economic one, and Congress may make rough accommoda-

tions in solving practical problems relating to economic benefits.

C. The provisions did not unconstitutionally discriminate against residents of counties without local child-placement agencies. Congress could properly condition economic benefits on the use of a child-placement agency even if some persons have no access to such an agency. But this record does not indicate that child-placement services were unavailable to petitioner. It indicates only that he could not foresee the subsequently enacted requirement.

III

The Social Security Administration's regulation—which defines "child-placement agency" to exclude courts and court-appointed investigators—is valid. It is consistent with the statutory purpose and legislative history, which indicate that Congress intended the dual assurance of a judicial decree and professional supervision.

ARGUMENT

I

THE WRIT OF CERTIORARI SHOULD BE DISMISSED AS IMPROVIDENTLY GRANTED BECAUSE, AS A RESULT OF THE REPEAL OF SECTION 202(d)(8)(E) AFTER THE PETITION FOR CERTIORARI WAS GRANTED, THE ISSUES IN THIS CASE ARE NO LONGER IMPORTANT

The petition for certiorari was granted in this case to consider the constitutionality of the provision of the Social Security Act and implementing regulations that limit child's insurance benefits for children adopted by a disability beneficiary after he became entitled to disability benefits to situations where the

adoption was supervised by a child-placement agency. After the petition was granted, however, Congress repealed those provisions and substituted for them the requirement that the child must have resided with and received more than half of its support from the wage earner during the year before the latter became entitled to disability benefits. For the future, therefore, it will be irrelevant, in deciding applications for child's insurance benefits for adopted children, whether the adoption was supervised by a child placement agency.[11]

To our knowledge, there are no other pending court cases involving the issue. The validity of the superseded provision can affect the payment of benefits only to the narrow class of children who were adopted after the wage earner qualified for benefits and on whose behalf applications were filed between 1968 and 1972. The issues in this case, therefore, are no longer of continuing importance. Had Section 202(d)(8)(E) been superseded by the new legislation at the time the petition for certiorari was pending, the case "would hardly have been brought here in the first instance." *Rice* v. *Sioux City Memorial Park Cemetery*, 349 U.S. 70, 76–77.

In these circumstances, the Court's customary practice is to dismiss the writ of certiorari as improvidently granted. In the *Rice* case, *supra*, the Court so dismissed the writ because a state statute, enacted after the litigation had commenced, barred "the ulti-

[11] Petitioner's adopted grandchild apparently would not qualify for benefits under the amended statute. See note 10, *supra*.

mate question presented in this case from again arising in that State" (349 U.S. at 73). Cf. *District of Columbia* v. *Sweeney*, 310 U.S. 631, where certiorari was denied "in view of the fact that the tax is laid under a statute which has been repealed and the question is therefore not of public importance."[12]

II

FORMER SECTION 202(D)(8)(E) IS RATIONALLY BASED AND FREE OF INVIDIOUS DISCRIMINATION

Although the Fifth Amendment has no equal protection clause, discrimination may be "so unjustifiable as to be violative of due process." *Bolling* v. *Sharpe*,

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[12] The Court's refusal to dismiss the writ as improvidently granted in *Jones* v. *Alfred H. Mayer Co.*, 392 U.S. 409, 417–418, n. 21, does not call for a similar result in this case. *Jones* was a private suit under 42 U.S.C. 1982 for injunctive and other relief based on a private, racially-motivated refusal to sell real property. The issue was whether Section 1982 applied to private as well as state action. After oral argument in the case, the Civil Rights Act of 1968 was signed into law. Although Title VIII of the Act would apply in some instances of private refusals to sell, it did not repeal or supersede Section 1982. The Court detailed "the vast differences between, on the one hand, a general statute applicable only to racial discrimination in the rental and sale of property and enforceable only by private parties acting on their own initiative, and, on the other hand, a detailed housing law, applicable to a broad range of discriminatory practices and enforceable by a complete arsenal of federal authority" (392 U.S. at 417).

Here, by contrast, the superseding provisions of Section 202(d)(8) eliminated the legislative classification that petitioner challenges and covers the same subject matter as the former provisions.

347 U.S. 497, 499; *Schneider* v. *Rusk*, 377 U.S. 163, 168; *Shapiro* v. *Thompson*, 394 U.S. 618, 642. In statutes dealing with economic benefits, a legislative classification must be upheld "'if any state of facts reasonably may be conceived to justify it'." *Dandridge* v. *Williams*, 397 U.S. 471, 485; see also *Richardson* v. *Belcher*, 404 U.S. 78, 81; *Jefferson* v. *Hackney*, 406 U.S. 535, 546; *McGowan* v. *Maryland*, 366 U.S. 420, 426. A classification is constitutionally infirm only if it is "patently arbitrary" and bears no rational relationship to the objective sought to be advanced by the statute. *Flemming* v. *Nestor*, 363 U.S. 603, 611; *Reed* v. *Reed*, 404 U.S. 71, 76.

Just last Term, in *Richardson* v. *Belcher*, *supra*, this Court reaffirmed the principle that a Social Security Act classification is consistent with equal protection and due process if it is "'rationally based and free from invidious discrimination'" (404 U.S. at 81).[13] Emphasizing its "limited function under the Constitution" in this type of case, the Court summarized the governing standard as follows (404 U.S. at 84):

> If the goals sought are legitimate, and the classification adopted is rationally related to the achievement of those goals, then the action of Congress is not so arbitrary as to violate the Due Process Clause of the Fifth Amendment.

Former Section 202(d)(8)(E) met these requirements.

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[13] The Court in *Belcher* upheld the provisions of Section 224, 42 U.S.C. 424a, which require a reduction in disability benefits to reflect workmen's compensation payments.

A. THE PROVISIONS WERE REASONABLY DESIGNED TO MINIMIZE THE POSSIBILITY OF ABUSE THROUGH ADOPTION OF CHILDREN SOLELY TO QUALIFY THEM FOR BENEFITS

Child's insurance benefits are payable to the dependent minor children of a wage earner if the wage earner becomes disabled, retires, or dies.[14] Prior to 1960 the Act did not provide child's insurance benefits for a wage earner's children born or adopted after he became disabled.[15] In that year, the law was changed to provide benefits for "after-born" children of disability beneficiaries,[16] because Congress concluded there was no reason to treat such children differently from their siblings who were born prior to the wage earner's disability, or from after-born children of old-age beneficiaries.[17] It was apparently the judgment of Congress that the new benefits left little room for abuse, since it was unlikely that a disabled wage earner would conceive children simply for the purpose of economic gain.

With respect to "after-adopted" children of disability beneficiaries, however, Congress was concerned

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[14] The historic purpose is "to replace the support lost by a child when his father retires, dies, or becomes disabled * * *." See, *e.g.*, S. Rep. No. 404, 89th Cong., 1st Sess., p. 110; S. Rep. No. 92–1230, 92d Cong., 2d Sess., p. 141; H. Rep. No. 92–231, 92d Cong., 1st Sess., p. 52.

[15] See 42 U.S.C. 402(d)(1)(C)(i) (1958 ed.). There were at that time no similar restrictions with respect to children of old-age beneficiaries. See 42 U.S.C.(d)(1)(C)(ii) (1958 ed.).

[16] Social Security Amendments of 1960, Pub. L. 86–778, § 201(a), 74 Stat. 946, amending Section 202(d)(1)(C) of the Act. See 42 U.S.C. 402(d)(1)(C) (1964 ed.).

[17] See S. Rep. No. 1856, 86th Cong., 2d Sess., pp. 36, 72; H. Rep. No. 1799, 86th Cong., 2d Sess., pp. 33, 84.

that automatic entitlement to child's benefits could lead to adoptions motivated principally by economic gain and not in the interest of the child's welfare. Therefore, while the 1960 amendments extended benefits to after-adopted children, Congress attached safeguards designed to minimize the potential for abuse.[18] It thus provided that benefits would be available only if the after-adopted child had been living with the wage earner before the onset of the disability (or if adoption proceedings had commenced by then) and if the adoption was decreed within two years after the disability entitlement.[19] In 1965, when Congress attached similar conditions to the benefits for after-adopted children of *old-age* beneficiaries,[20] it reiterated that the intent was to provide "safeguards against abuse through adoption of children solely to qualify them

[18] The stated purpose was "to limit payment of benefits to cases where it is generally reasonable to assume that the disabled worker, before the disability benefits were payable, had intended to adopt the child." Hearings on H.R. 12580 before the Senate Committee on Finance, 86th Cong., 2d Sess., p. 467. See generally H. Rep. No. 1799, 86th Cong., 2d Sess., pp. 33, 84–85; S. Rep. No. 1856, 86th Cong., 2d Sess., pp. 36, 72; H. Rep. (Conf. Rep.) No. 2165, 86th Cong., 2d Sess., pp. 19–20; Hearings on H.R. 12580, *supra*, pp. 15, 466–467; 106 Cong. Rec. 16884, 16889.

[19] Social Security Amendments of 1960, Pub. L. 86–778, § 201 (b), 74 Stat. 946, adding a new sentence at the end of Section 202(d)(1) of the Act. See 42 U.S.C. 402(d)(1) (1964 ed.). These provisions were transferred in 1965 without substantive change to a new Section 202(d)(9). Pub. L. 89–97, § 323(a), 79 Stat. 397–398. The Section was later renumbered 202(d)(8). See 42 U.S.C. 402(d)(8).

[20] Social Security Amendments of 1965, Pub. L. 89–97, § 323 (a)(2), 79 Stat. 397–398, adding a new Section 202(d)(10), later renumbered 202(d)(9). See 42 U.S.C. 402(d)(9).

for benefits * * *." S. Rep. No. 404, 89th Cong., 1st Sess., p. 108. This legislative purpose has been recognized and approved by the lower courts. See, *e.g.*, *Hagler* v. *Finch*, 451 F. 2d 45, 48 (C.A. 9), certiorari denied, 405 U.S. 1071; *Rowe* v. *Finch*, 427 F. 2d 417, 419 (C.A. 4); *Craig* v. *Finch*, 425 F. 2d 1005, 1009 (C.A. 5).

In 1967, Congress reviewed again the statutory conditions on benefits for after-adopted children of disability beneficiaries. Senator Allott, author of the challenged provisions, stated on the Senate floor that in his view the feared abuses did not fully justify all the Act's restrictions. 113 Cong. Rec. 33196. He referred to the case of a recently-married disabled veteran who was entitled to disability insurance benefits but who could not obtain benefits for his adopted child because the adoption had taken place more than two years after the veteran's own disability entitlement. 113 Cong. Rec. 33197. Senator Allott proposed an amendment that would cover this case and others, but with limitations designed to provide assistance "only for good faith adoptions." 113 Cong. Rec. 33196. Under his amendment, which was conceived as an alternative rather than as a replacement for the existing two-year cut-off provision, Senator Allott explained (113 Cong. Rec. 33196):

> * * * a child who is adopted by a person receiving disability benefits could qualify for child's benefits if first, the adoption took place under the supervision of a public or private child placement agency; second, the adoption was decreed by a court of competent jurisdiction * * *.

Senator Curtis, who also spoke for the amendment, made the following comment pertaining to its two principal conditions (113 Cong. Rec. 33197):

> I believe that the amendment will not invite abuses. I believe, on the other hand, that it will take care of some very worthy cases, although they are not very many in number.
>
> I think that Congress can rely on the fact that the adoption of children is not taken lightly by the courts. Neither is the adoption of children taken lightly by public and private child placement agencies. I think those two conditions can only be met when there are other substantial reasons for the adoption.

Senator Allott added: "I think that the limitation which I have placed in the amendment will keep the amendment from ever being abused. If it were abused, I would be the first to ask for a modification of the amendment." 113 Cong. Rec. 33197. The amendment was adopted and became Section 202(d)(8)(E) of the Act, 42 U.S.C. 402(d)(8)(E).[21]

Under the applicable constitutional standards (pp. 12–13, *supra*), this amendment satisfies the due process clause of the Fifth Amendment. The legislative goal—minimizing adoptions undertaken solely to qualify for Social Security benefits—is a legitimate one. In extending federal benefits to a class of persons, Congress may properly seek to reduce the likelihood that the promise of benefits will invite abuses. Here, Congress determined that it had an obligation, in provid-

[21] Social Security Amendments of 1967, Pub. L. 90-248, § 112(a), 81 Stat. 838–839. See also H. Rep. (Conf. Rep.) No. 1030, 90th Cong., 1st Sess., p. 39.

ing child's benefits for after-adopted children, to protect against adoptions motivated principally by the hope of economic gain rather than by an interest in the child's welfare.

While reasonable men may disagree about the best way to accomplish this purpose, the means chosen by Congress in the 1968 amendments were rationally related to the achievement of the legislative goal. The Congress could reasonably determine that the combined safeguards of professional supervision by a specialized agency and a formal judicial decree of adoption would provide the necessary assurance that the adoption was in the child's best interest. It could properly conclude also that either safeguard standing alone would not be sufficient.

Supervision by a child-placement agency may be a generally reliable precautionary measure, but its reliability is enhanced by requiring in addition the detached scrutiny of a judicial officer in a formal proceeding. Similarly, while a court is unlikely to approve an adoption unless satisfied that it is *bona fide* and not merely expedient,[22] courts are not the best equipped institutions to investigate and supervise adoptions. The detached and cautious judgment of a court could reasonably be deemed more reliable when

[22] See, *e.g.*, *Gutierrez* v. *New Mexico Dept. of Public Welfare*, 74 N.M. 273, 393 P. 2d 12, where the court reversed an adoption decree because the evidence indicated that the sole reason for the grandfather's adoption of his grandchildren was to increase his Social Security benefits.

based upon the report of a child-placement or adoption agency which specializes in such matters.[23]

It was on the basis of this reasoning that the Ninth Circuit, in *Hagler* v. *Finch,* 451 F. 2d 45, certiorari denied, 405 U.S. 1071, upheld the provision against constitutional attack. The court stated (451 F. 2d at 48):

> The statutory scheme rests upon a reasonable basis, since its two step procedure provides a greater likelihood of careful screening to prevent abuse of the Act. This minimal rational basis is all the Constitution requires of a statute in the area of economics and social welfare. * * * [24]

The fact that the specific abuse against which Congress sought to guard in the statute may not exist in this particular case does not justify either invalidating the statute in the particular application or creating an *ad hoc* exception to its general provisions. "[I]f evils disclosed themselves which entitled Congress to legislate as it did, Congress had power to legislate generally, unlimited by proof of the existence of the evils in each

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[23] Petitioner's argument that the requirement of professional supervision is "superfluous" (Br. 41) is appropriately addressed to the Congress rather than the Court, for it relates to the wisdom, not the rationality, of the legislation.

[24] In *Hagler* the adoption decree was predicated on an investigation by a court-employed "Adoption Examiner." This did not satisfy the statute, however, because the examiner did not represent a child-placement agency. The court recognized, in sustaining the statutory requirement, that "many courts no doubt lack the time and resources effectively to inquire into parents' qualifications" (451 F. 2d at 48).

particular situation." *North American Co.* v. *Securities and Exchange Commission,* 327 U.S. 686, 710–711.

B. THE PROVISIONS DID NOT UNCONSTITUTIONALLY DISCRIMINATE AGAINST ADOPTED CHILDREN

Petitioner argues here, for the first time, that former Section 202(d)(8)(E) invidiously discriminates against adopted children (Br. 20–40).[25] He relies principally upon this Court's recent decisions in *Weber* v. *Aetna Casualty & Surety Co.,* 406 U.S. 164, and *Stanley* v. *Illinois,* 405 U.S. 645. Neither *Weber* nor *Stanley,* however, requires that the statute here be struck down.

In *Weber,* the Court invalidated under the equal protection clause a provision of Louisiana's workmen's compensation law that accorded death benefits to unacknowledged illegitimate children on a different basis than to legitimate and acknowledged illegitimate children. The justification advanced in support of the legislative classification was that it furthered the State's interest in protecting "legitimate family relationships." The Court, however, found no basis for concluding that the statute would promote that objec-

[25] The issue was neither argued nor decided in the courts below. The only constitutional issue petitioner has heretofore raised was whether the statute unconstitutionally discriminated between counties with local child-placement services and those without such services (see pp. 23–25, *infra*). This Court ordinarily does not consider issues presented here for the first time. *Lawn* v. *United States,* 355 U.S. 339, 362–363, n. 16; *United States* v. *New York Telephone Co.,* 326 U.S. 638, 650–651, n. 18.

tive; it was unreasonable to think that "persons will shun illicit relations because the offspring may not one day reap the benefits of workmen's compensation" (406 U.S. at 173). Nor did the classification bear any significant relationship to the recognized purposes served by workmen's compensation laws (*id.* at 175). The classification was but another manifestation of Louisiana's "pattern of discrimination" against illegitimates (*id.* at 172).[26]

We have already shown that the statute here was reasonably related to the proper legislative objective of granting child's benefits to adopted children while protecting against adoptions solely for economic gain. The provisions of the Act were not part of any pervasive policy of discrimination against adopted children. On the contrary, they were designed to protect the interests of adopted children by discouraging economically motivated adoptions not in the child's best interests.

In *Stanley* v. *Illinois, supra,* this Court invalidated under the Fourteenth Amendment an Illinois statute under which the children of unmarried fathers were, on the mother's death, declared state wards and placed in guardianship without any prior hearing on the father's fitness and without any proof of neglect. The Court held that, in view of the "essential" interest of

[26] This Court had previously ruled three times on the constitutionality of Louisiana statutory discriminations based on illegitimacy. *Levy* v. *Louisiana*, 391 U.S. 68; *Glona* v. *American Guarantee & Liability Insurance Co.*, 391 U.S. 73; *Labine* v. *Vincent*, 401 U.S. 532.

a father in his own children [27] and the absence of any substantial state interest in separating children from fathers without a hearing as to fitness, a hearing would be required under the due process clause (405 U.S. at 649–658). It reasoned that since the State assumed custody of the children of married parents, divorced parents, and unmarried mothers only after a hearing and proof of neglect, the denial of a hearing to unmarried fathers violated the equal protection clause.

There is here no interest at stake approaching that of a father whose child is to be taken from him by the State. The statute merely established standards to ensure that the availability of child's benefits did not invite abuse through economically motivated adoptions. A family's interest in child's insurance benefits is economic and is therefore not entitled to the exceptional protections afforded to fundamental interests. Section 202(d)(8)(E) reflected a permissible congressional determination that the supervision of a child-placement agency and the decree of a local court were the appropriate methods for determining the *bona fides* of the adoption and for preventing abuse.

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[27] The Court stated (*id.* at 651):

> The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection. It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children "come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements." *Kovacs* v. *Cooper*, 336 U.S. 77, 95 (1949) (Frankfurter, J., concurring).

The legislature is free within the limits of reasonableness to make "rough accommodations" in solving practical problems, and its judgment will not be upset in matters of economics or social welfare merely because the resulting provision may affect some to whom the rationale does not in logic apply or may fail to reach some to whom the rationale should apply. See *Dandridge* v. *Williams*, 397 U.S. 471, 485; *Flemming* v. *Nestor*, 363 U.S. 603, 612.[28]

C. THE PROVISIONS DID NOT UNCONSTITUTIONALLY DISCRIMINATE AGAINST RESIDENTS OF COUNTIES WITHOUT LOCAL CHILD-PLACEMENT AGENCIES

If, as we have argued, the requirement that an adoption be supervised by a child-placement agency was a reasonable way to accomplish a legitimate governmental objective, then the statute would not violate the due process clause even though some political subdivisions lacked child-placement facilities. Congress could properly condition benefits upon the added assurance of professional supervision, notwithstanding

[28] The other cases relied on by petitioner are inapposite. *Carrington* v. *Rash*, 380 U.S. 89, held that a state could not deny the fundamental right to vote "because of some remote administrative benefit" (380 U.S. at 96). *Bell* v. *Burson*, 402 U.S. 535, applied to a state statute which required suspension of a driver's license without a determination of fault the familiar rule that "relevant constitutional restraints limit state power to terminate an entitlement" (402 U.S. at 539). In *Reed* v. *Reed*, 404 U.S. 71, a state statutory preference for men over women as administrators of estates was struck down because it was unreasonable to prefer men when men and women were equally capable of performing the duties of an administrator.

that some persons might have no access to such supervision.

But this case does not present that issue. At the time petitioner adopted his granddaughter (more than a year before the provisions in question were enacted), state law required that the adoption take place in the adopting parents' county of residence,[19] and Raleigh County had no local child-placement agency (Tr. 113; App. 34). But petitioner was not without access to suitable child-placement services. The federal statute did not specify that the child-placement agency supervising the adoption must be a local one. There was nothing to foreclose supervision[20] by a public or private agency based in another county, or by the West Virginia State Department of Welfare which, as petitioner concedes (Br. 41–42), does function as a statewide child-placement agency.

Nor does this record contain anything to suggest that such services were unavailable to petitioner at the time of the adoption. Indeed, what little there is suggests that the State Department of Welfare could have provided the necessary services; the Boone County office of that agency did conduct a post-adoption investigation of petitioner's home in connection with his daughter's divorce decree.[21] Moreover, as

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[19] W. Va. Code § 48–4–1 (Michie 1966). See App. 48, 53.

[20] Under the Social Security Administration's regulations, "supervision of a public or private child-placement agency" was accomplished if the agency was "significantly involved in the adoption by making an investigation to determine the suitability of the adopting parent * * *." 20 C.F.R. 404.323(c)(3).

[21] The record shows that in August 1967 a Welfare Department Social Worker from neighboring Boone County visited

the court below found (App. 55), and as petitioner concedes (Br. 42), the child could have been "relinquished" to the state agency for placement in petitioner's home after an investigation.[32]

Of course, petitioner had no reason in 1966 to seek the services of a child-placement agency, because state law did not require it and the federal statute had not yet been enacted. But those considerations do not support petitioner's argument that the federal statute discriminated against residents of counties lacking local child-placement services. Petitioner was disadvantaged, if at all, by the prospective nature of the 1968 amendment, not by any supposed inability to secure the services of a qualified agency.

On this record, therefore, there is no basis to conclude that appropriate child-placement services were unavailable to petitioner in 1966; and there is consequently no reason to reach the question whether such unavailability would render unconstitutional an otherwise reasonable legislative classification.

III

THE SOCIAL SECURITY ADMINISTRATION'S REGULATION DEFINING CHILD-PLACEMENT AGENCY TO EXCLUDE COURTS WAS A VALID IMPLEMENTATION OF THE STATUTE

Section 202(d)(8)(E) permitted the payment of benefits for after-adopted children whose adoption took place under the supervision of a child-placement

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petitioner's home to conduct a divorce and custody investigation for an Ohio court (Tr. 112; App. 35).

[32] See W. Va. Code § 49-3-1 (Michie 1966).

agency *and* was decreed by a court. The Social Security Administration's implementing regulation, issued soon after the statutory provisions were enacted, defined the term "public child-placement agency" as

> any governmental agency authorized by a State * * * or local governmental agency or component of either to place children in a private home for adoption. *The term does not include a court; it also does not include a court investigator,* juvenile officer, or other governmental official or agency appointed solely for the purpose of conducting an investigation for the court in an adoption proceeding unless such governmental official or agency has the authority to place children in private homes for adoption. [20 C.F.R. 404.323(c)(1); emphasis added.]

Petitioner argues (Br. 50–52) that this regulation, insofar as it excluded courts from the definition of child-placement agency, was arbitrary and invalid. In view of the plain language of the statute and the congressional intent as indicated by the legislative history (see pp. 16–19, *supra*), the court below properly held that the Administration's contemporaneous construction of the child-placement requirement was reasonable and fully consistent with the statute. Cf. *Fawcus Machine Co.* v. *United States,* 282 U.S. 375, 378; *Brasher* v. *Celebrezze,* 340 F. 2d 413, 418 (C.A. 8). It was reasonable to interpret the statute as requiring in every case both a formal adoption decree *and* independent supervision by a professional agency specializing in child-placement. It was reasonable also to provide that courts and court investigators did not qualify as specialized child-placement agencies within

the meaning of the statute, for if they did the congressional purpose of requiring double assurance would have been frustrated.[23]

The other courts of appeals that have considered the issue are in accord with the court below that the regulation was valid. *Hagler* v. *Finch*, 451 F. 2d 45 (C.A. 9), certiorari denied, 405 U.S. 1071; *Braudt* v. *Richardson*, No. 72–1030, C.A. 6, decided May 8, 1972. The district courts have reached the same conclusion. *Gillums* v. *Secretary of Health, Education & Welfare*, 331 F. Supp. 204 (D. Md.); *Keys* v. *Richardson*, 325 F. Supp. 459 (E.D. Tenn.); *Griffith* v. *Finch*, 319 F. Supp. 548 (E.D. Tenn.).[24]

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[23] In this case the adoption was decreed by the Criminal Court of Raleigh County, sitting as a juvenile court. See note 2, *supra*. The town policeman, appointed by the court to conduct an investigation, was not a professional child-placement specialist.

Petitioner states that juvenile courts in West Virginia have "statutory authority to supervise the placement of children in suitable homes," citing W. Va. Code § 49–5–14 (Michie 1966) (Br. 15). While that Section authorizes juvenile courts to "[c]ommit [a] child to the care and custody of some suitable person," that authority is limited to petitions for disposition of suspected delinquents. See W. Va. Code § 49–5–7 (Michie 1966).

[24] Petitioner makes two additional arguments in his brief, neither of which was presented to or ruled upon in the court of appeals. He argues that Section 202(d)(8) should be ignored because benefits were otherwise payable under Sections 202(d)(1) and 202(d)(3) (Br. 48–50). This contention, which was accepted by the Social Security hearing examiner (note 6, *supra*) and rejected by the Appeals Council (note 7, *supra*), is without merit. Section 202(d)(8) by its own terms qualified paragraph (d)(1), which states only the general rule that benefits are payable to children dependent on the beneficiary. Paragraph (d)(8) provided that after-adopted children "shall be deemed not to meet the requirements of clause (i)

CONCLUSION

For reasons set forth in Part I, the writ of certiorari should be dismissed. Alternatively, for the reasons set forth in Parts II and III, the judgment of the court of appeals should be affirmed.

Respectfully submitted.

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or (iii) of paragraph (1)(C)" unless they fit one of the specified categories. To ignore paragraph (d)(8) would be to distort plain congressional intent.

Second, petitioner argues (Br. 43–47) that former Section 202(d)(8)(E) unconstitutionally interfered with West Virginia adoption laws and policy. The federal statute, however, does not attempt to control the State's adoption policies; it merely attaches certain federal consequences to those policies. In any event, if a federal statute is reasonably related to a proper governmental purpose, it is constitutional notwithstanding that it may effect a policy different from that of a State. See, *e.g.*, *Case* v. *Bowles*, 327 U.S. 92, 102.

APPENDIX

1. Section 202(d)(1) of the Social Security Act, 42 U.S.C. 402(d)(1), provides in pertinent part:

> (d)(1) Every child * * * of an individual entitled to old-age or disability insurance benefits * * *, if such child—
>
> (A) has filed application for child's insurance benefits,
>
> (B) * * *
>
> (C) was dependent upon such individual—
>
> (i) if such individual is living, at the time such application was filed,
>
> * * * * *
>
> shall be entitled to a child's insurance benefit * * *

2. Section 202(d)(8) of the Social Security Act, 42 U.S.C. 402(d)(8) (1970 ed.), provided in pertinent part:

> (d)(8) In the case of—
>
> (A) an individual entitled to disability insurance benefits, * * *
>
> (B) * * *
>
> a child of such individual adopted after such individual became entitled to such disability insurance benefits shall be deemed not to meet the requirements of clause (i) or (iii) of paragraph (1)(C) of this subsection unless such child—
>
> (C) * * *
>
> (D) was legally adopted by such individual before the end of the 24-month period beginning with the month after the month in which such individual most recently became entitled to disability insurance benefits, but only if—

(i) proceedings for such adoption of the child had been instituted by such individual in or before the month in which began the period of disability of such individual * * * or

(ii) such adopted child was living with such individual in such month; or

(E) was legally adopted by such individual—

(i) in an adoption which took place under the supervision of a public or private child placement agency.

(ii) in an adoption decreed by a court of competent jurisdiction within the United States,

(iii) on a date immediately preceding which such individual had continuously resided for not less than one year within the United States;

(iv) at a time prior to the attainment of age 18 by such child.

3. Section 202(d)(8) was amended on October 30, 1972, by Section 111(a) of the Social Security Amendments of 1972, Public Law 92-603, 86 Stat. 1329, 1346. The present version of Section 202(d)(8) provides in pertinent part:

In the case of—

(A) * * *

(B) an individual entitled to disability insurance benefits * * *

a child of such individual adopted after such individual became entitled to such * * * disability insurance benefits shall be deemed not to meet the requirements of clause (i) * * * of paragraph (1)(C) unless such child—

(C) * * *

(D)(i) was legally adopted by such individual in an adoption decreed by a court of competent jurisdiction within the United States,

(ii) was living with such individual in the United States and receiving at least one-half of his support from such individual * * * for the year immediately before * * * the month in which such individual became entitled to disability insurance benefits, and

(iii) had not attained the age of 18 before he began living with such individual.

* * * * *

4. Section 404.323(c) of Social Security Administration Regulation No. 4, 20 C.F.R. 404.323(c), provides in pertinent part:

(c) *Adoption under the supervision of a public or private child-placement agency.*

(1) *Public child-placement agency.*—For the purposes * * * of this section, the term "public child-placement agency" means any governmental agency authorized by a State * * * or local governmental agency or component of either to place children in a private home for adoption. The term does not include a court; it also does not include a court investigator, juvenile officer, probation officer, or other governmental official or agency appointed solely for the purpose of conducting an investigation for the court in an adoption proceeding unless such governmental official or agency has the authority to place children in private homes for adoption.

(2) *Private child-placement agency.*—For the purposes * * * of this section, the term "private child-placement agency" means any individual, corporation, organization, or institution licensed or approved by a State or local governmental agency or component of either to place children in a private home for adoption. * * *

(3) *Supervision by a child-placement agency.*—For purposes of * * * this section,

the term "supervision of a public or private child-placement agency" means that such agency as defined in subparagraphs (1) and (2) of this paragraph, prior to the final decree of adoption, was significantly involved in the adoption by making an investigation to determine the suitability of the adopting parent and the eligibility of the child for adoption, or by issuing a report of such suitability and eligibility, or by making recommendations based on such suitability and eligibility, to the court having jurisdiction of the adoption proceedings. This requirement is not met if such investigation, report, or recommendation by such agency was not made, whether because it was waived, or because it is not required under applicable State law, or for any other reason.

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